

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
) Civil Action
v.) No. 99-CV-02496 (GK)
)
PHILIP MORRIS USA INC.,) Next scheduled appearance:
f/k/a PHILIP MORRIS INC., et al.) Trial (ongoing)
)
Defendants.)

)
THE UNITED STATES' WRITTEN DIRECT EXAMINATION OF
JOHN ST. VINCENT WELCH
SUBMITTED PURSUANT TO ORDER #471A

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Q. Good morning, Mr. Welch. Could you please state your full name for the record.

A. John Basil William St. Vincent Welch.

Q. Are you represented by counsel?

A. Yes. Mr. Roland Keller.

Q. Mr. Welch, could you please state your current residence for the Court?

A. [DELETED].

Q. Are you an Australian citizen?

A. Yes.

Q. What is your current occupation?

A. I am self-employed as an industrial relations consultant.

Q. What are your responsibilities as an industrial relations consultant?

A. I handle, for both employers and employees, disputes regarding enterprise bargaining,

dispute resolution, and unfair dismissals in a wide range of industries.

Q. How long have you been an independent industrial relations consultant?

A. Since 13 February 1996.

Q. Have you ever been employed by Tobacco Institute of Australia?

A. Yes.

Q. We will return to the subject of the Tobacco Institute of Australia, but first, I'd

like

to address briefly your educational and professional background.

Did you attend university?

A. Yes.

Q. What degree do you hold?

A. I have a Bachelor's Degree in economics from The University of Sydney.

Q. When did you received that degree?

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A. 1974.

Q. What professional positions did you hold prior to joining the Tobacco Institute of Australia?

A. I was a Personnel Officer for Nestle. I was an Industrial Officer for Dillingham Corporation and the Metal Trades Industrial Association. Following that, I was the Federal Industrial Officer of the Australian Medical Association. I was then the Executive

Director of the Oil Industry Industrial Secretariat. I then consulted for the Tasmanian Government regarding issues similar to those I addressed at the AMA. I also was an independent industrial relations consultant prior to my joining the Tobacco Institute.

Q. What did you do after leaving the Tobacco Institute of Australia?

A. I returned to to industrial relations consulting, before going to work as the Vice-President

- Human Resources for the Sydney Harbour Casino. I went back to industrial relations consulting after being fired from the Sydney Casino.

Q. Why were you fired?

A. Allegations were made that I had benefitted financially by the letting of a superannuation

contract. I was cleared of the false allegations by the Casino Control Authority, the State

of New South Wales gaming regulatory body. I sued the casino for damages. Settlement was reached with the casino - they provided a monetary settlement and issued a statement

clearing my name and regretting the circumstances of the termination of my employment.

Q. What was your position with the Tobacco Institute of Australia?

A. Chief Executive Officer.

Q. For purposes of the examination I may refer to the Tobacco Institute of Australia as

the "TIA", is that clear?

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Q. During what time period did you work for the TIA as Chief Executive Officer?

A. From 21 January 1991 to the end of April 1992.

Q. What was the TIA?

A. The TIA was the industry organization of the Australian tobacco manufacturers and distributors.

Q. What was its purpose?

A. The TIA existed to provide the tobacco industry with a unified public relations arm to address public relation matters, primarily issues of smoking and health and advertising sponsorship of sport and the arts. The TIA was the industry's lobbying arm on issues facing the industry as a whole. The TIA also served as means for facilitating communication between the member companies on numerous issues.

Q. Did the Tobacco Institute of Australia have any relationship to the Tobacco Institute in the United States that is a Defendant in the instant lawsuit?

A. I don't believe that there was any formal relationship, however, the Tobacco Institute of

Australia served the function in Australia that the United States' Tobacco Institute served in the United States.

Q. Was there any direct communication between the TIA and the United States' Tobacco Institute?

A. Yes.

Q. What was the nature of the communication?

A. I don't recall, other than one meeting between myself and my U.S. counterpart and general communication.

Q. I'm handing you U.S. Exhibit 89,395. Have you seen this document before?

A. Yes. It is a letter than I received from Sam Chilcote.

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Q. Who is Sam Chilcote?

A. He was the head of the U.S. Tobacco Institute. On this document it lists his title as President.

Q. Was he the individual that you usually communicated with at the U.S. Tobacco Institute?

A. Yes.

Q. Did you at any point meet with Mr. Chilcote?

A. Yes.

Q. Do you remember the specific topics addressed in this letter?

A. No.

Q. Who were the members of the TIA during your tenure?

A. When I commenced, the four companies were Philip Morris Limited, the Australian subsidiary of Philip Morris; WD & HO Wills, the Australian subsidiary of BATCo; Rothmans Holding Limited, the Australian affiliate of Rothmans; and RJ Reynolds's Australian affiliate.

Q. Did the membership of the TIA change during your tenure?

A. Yes. Toward the end of my time at the TIA, Rothmans's Australian subsidiary took over

RJ Reynolds's Australian subsidiary.

Q. Does the TIA still exist?

A. To the best of my knowledge, no.

Q. What was the structure of the TIA?

A. The TIA was a secretariat, of which I was the chief executive officer. The four member

companies funded the secretariat. The chief executives of the four Australian companies, which became three by the end of my tenure, would meet on a regular basis, approximately

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once a month, to discuss industry issues, and I was the secretary to that committee.

Below

that committee there was another committee comprising the corporate or government and public affairs officers of the four Australian companies - to become three - and I was the

convener/chairman of that committee. The chief executives decided policy and the government and public affairs officers put the policy into practice.

Q. Mr. Welch, what authority did the TIA have over its member companies?

A. The TIA had no authority over the member companies. The TIA was set up to serve the

member companies. Nothing was ever done by the TIA without the direction and approval

of the members. Every TIA policy came directly from the member companies.

Q. Did the TIA, or anyone at the TIA have the ability under some circumstances to "veto" directives from the member companies?

A. No.

Q. How were instructions given from the member companies to the TIA?

A. As a result of the regular meetings or by way of letter and telephone hookups.

Q. Were you ever directed to write documents on behalf of member companies?

A. Yes.

Q. Were you ever provided with documents from the member companies for your signature?

A. Yes, drafts which were then put on the TIA letterhead.

Q. As CEO of the TIA, who would you communicate with at the member companies?

A. The CEOs and the government & public affairs officers of the member companies.

Q. How frequently would you communicate with the member companies?

A. On a daily basis.

Q. What matters would you correspond about or discuss?

A. The full range of topics addressed by the TIA - litigation, legislation, public relations.

Everything and anything that I worked on.

Q. How did you come to be employed by the TIA?

A. I was head hunted through a firm called Sheffield Byrne. I was interviewed by the chief

executives of the four member companies on a number of occasions before being offered the position.

Q. What did you understand your responsibilities to be when you were hired as the CEO of the TIA?

A. To head up the secretariat, to be the spokesperson for the industry on industry matters,

to

administer the secretariat, and to be the principal lobbyist on industry legislative issues.

Q. Whom did you report to during your tenure at the TIA?

A. I reported to the Chairman of the TIA, a position that rotated through the CEOs of the

member companies. The actual individual changed several times during my tenure, but was Mr. John Devine, the CEO of Rothmans, for much of my time as CEO of the TIA. I also reported to the CEOs and government and public affairs officers of the member companies.

Q. As CEO of the TIA did you work with any external law firms for the industry?

A. Yes.

Q. What firms?

A. Clayton Utz and Dunhill Madden Butler.

Q. Did the TIA have any in-house counsel while you were CEO of the TIA?

A. There was no immediate in-house counsel, however the TIA had an arrangement with Dunhill Madden Butler for Steven Klotz, a solicitor, to be seconded to the TIA, and he performed those duties one half day -- the morning of every day of the week. One of his

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duties was to examine and implement the Document Retention Policy.

Q. Were you ever provided with documents from the law firms for your signature?

A. Yes.

Q. Why did you leave the TIA in April of 1992?

A. My contract of employment contained a clause that would give me a salary review and a performance review at the end of 12 months. John Devine was the chairman of the board that was to conduct that performance review and he failed to do so. At that time, I did not think that Mr. Devine's failure in this regard made for a good working relationship. In addition, Reynolds was being taken over by Rothmans, and it had become apparent that the Chief Executive of Reynolds, Mr Ken Pimblett, needed alternative employment, and he was designated as the person who would take over as chief executive on my departure. There was another change in direction insofar as there was significant funding agreed but then cut. I approached John and we came to a mutually agreeable arrangement for my departure.

Q. You previously mentioned the TIA's Document Retention Policy. Did the TIA have a document retention policy at the start of your tenure at the TIA?

A. Yes.

Q. Was it a written policy?

A. Yes.

Q. What was the policy?

A. The Document Retention Policy was two-fold. First, when we were in receipt of documents that were potentially damaging to the industry and/or the member companies, once they'd been read they were to be destroyed. Second, where there were documents that were favourable to the industry's position, and not potentially damaging, once having been

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read, to retain them.

Q. Did the Document Retention Policy list any type of schedule of what documents had to be retained?

A. No, it was a general description. If a document were potentially damaging it would be treated in one fashion, if not, in another.

Q. Do you know where the Document Retention Policy came from?

A. It was my understanding that it was formulated by the government and public affairs officers at their various meetings and was supplemented by various legal advice.

Q. Do you recall who physically gave you the Document Retention Policy when you

started at the TIA?

A. I can't recall ever being given it. It was in existence at the Tobacco Institute when I arrived.

I can't recall somebody coming to me and saying, "There it is, read it."

Q. Did you distribute this policy to your staff?

A. Yes, but not the entire staff, just to the those who were involved in handling of documents, that's the two government public affairs officers, the librarian and my deputy chief executive.

Q. Do you recall how many pages it was?

A. To the best of my recollection, it was two pages.

Q. Was the Policy revised while you were at the TIA?

A. It was revised numerous times. The Policy was constantly under review.

Q. Do you recall whether the written Document Retention Policies had dates?

A. Yes, they did.

Q. Did the written Document Retention Policies have titles?

A. Yes. I think they were simply titled "Document Retention Policy".

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Q. Do you recall how many times was it reissued?

A. No, but it would have been two or three times during my tenure.

Q. Was it reissued by you?

A. It was reissued through my office.

Q. Do you know what the purpose of the TIA's Document Retention Policy was?

A. Yes.

Q. What was it?

A. At the time that I was the TIA's CEO, there was a great deal of pressure on the industry from anti-smoking organizations and concerns about lawsuits. The primary purpose of the

Document Retention Policy was to keep documents that were potentially damaging to the member companies or the TIA out of litigation and out of the hands of those that could use

the information to attack the industry. The view was, why leave a loaded gun on the table

that could be used against you? The Document Retention Policy was primarily a document destruction policy designed to make sure that potential "guns" were destroyed. The name "Document Retention Policy" was a misnomer. It's purpose was to minimise

the TIA library.

Q. Was there any other purpose for the Document Retention Policy?

A. Yes. A secondary purpose of the Policy was to address basic administrative functions, such as storage space.

Q. Were you familiar with the document retention policies of any of the other industry organizations at which you were employed?

A. Yes.

Q. Were the document retention policies at those organizations similar to the Document Retention Policy at the TIA?

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A. No.

Q. Why not?

A. The document retention policy at the Australian Medical Association was to keep everything, as was the policy at the Oil Industry Industrial Secretariat.

Q. How did you or other members of the TIA determine what documents should or should not be destroyed?

A. Certain decisions were easy to make and routine. Some documents from the member companies would explicitly say "read and destroy," so those would simply be shredded after reading. All drafts of correspondence and documents were destroyed. Other decisions, such as determining which documents were potentially harmful to the industry,

were more difficult. In those instances, one would consult with the government and public

affairs officers of the member companies or others such as Clayton Utz and Steven Klotz.

There also would be occasions where I would get instructions from a member company to

determine whether the TIA possessed a certain document, and if so, to destroy it.

Q. What was the primary factor in determining whether or not a specific document should be destroyed?

A. Whether the document would be damaging in litigation positions, legislative positions, or

public affairs positions.

Q. How did the government and public affairs officers to whom you would refer

questions regarding which documents should be destroyed determine whether a document would be damaging to a legal position and therefore should be destroyed?

A. They would communicate with their in-house counsel, if necessary, to make a legal sensitivity determination.

Q. Did you speak with any lawyers about the Document Retention Policy?

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A. Yes. However, most of my discussions about the Document Retention Policy were with government and public affairs officers of the member companies, as well as with the chief executives of the member companies.

Q. Which lawyers did you speak with regarding the Document Retention Policy?

A. Brian Wilson, Glenn Eggleton, and Donna Staunton-Mayne of Clayton Utz, and Steven Klotz, who as I previously mentioned, was seconded to the TIA.

Q. Was there any formal procedure for discussing whether a document was sensitive, and therefore should be destroyed?

A. Generally, there would simply be informal discussion of the document with the appropriate individual. However, sometimes whether a document should or shouldn't be destroyed would be put on the agenda for meetings with the member companies, then raised at meetings, where the potential danger of the document would be discussed and a decision made on whether or not the document should be destroyed. At the conclusion of the meeting, the agenda that mentioned the document would also be destroyed.

Q. Were there any classes of documents that were destroyed more often than others under the Document Retention Policy?

A. All drafts of documents were destroyed under the Policy. Any document specifically marked "read and destroy" would be destroyed under the Policy. Otherwise, the largest class of documents destroyed under the Policy were scientific documents considered potentially harmful to the member companies.

Q. Did some of the scientific reports and studies that were destroyed address whether or not smoking causes disease?

A. Yes.

Q. Did some of the scientific reports and studies that were destroyed address whether or

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not passive smoking causes disease?
A. Yes.
Q. Did some of the scientific reports and studies that were destroyed address whether or not nicotine is addictive?
A. Yes.
Q. Do you recall whether the scientific reports or studies that were destroyed were internal company documents or external documents?
A. Both.
Q. Were the scientific documents that were destroyed public documents, available outside of the member companies, or private documents, that wouldn't have otherwise been available to those outside the member companies?
A. Both.
Q. Why would there be concern that a public document could be potentially dangerous if others outside the member companies already had it?
A. Some of the public documents had sensitive notations or handwritten notes on them that were considered potentially dangerous, and therefore required their destruction. In addition it was considered imprudent to be in possession of potentially dangerous documents.
Q. Do you recall whether any of the documents that you received from the member companies came from their overseas affiliate or parent companies?
A. Yes. Most of the scientific documents came from the member companies' overseas affiliate or parent companies. At the time the issues in Australia were so sensitive the industry in Australia and overseas cooperated and worked very closely.
Q. Do you recall whether any of the documents that were destroyed were from the

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member companies affiliate or parent companies?

A. Yes. Correspondingly most of the documents that were destroyed were from the member

companies affiliate or parent companies.

Q. Were any of the documents that were destroyed scientific documents from the member companies' U.S. affiliate or parent companies?

A. Yes.

Q. Previously, you stated that correspondence would often include instructions to "read

and destroy". How frequent was correspondence of this kind?

A. Frequent. There were two shredders in the office and as you received mail it would frequently be shredded after being read and/or circulated in-house.

Q. Approximately how many times a week would you use the shredders?

A. Documents were destroyed on a daily basis.

Q. Do you know whether or not the litigation, legislative, and public affairs concerns driving the Document Retention Policy were specific to Australia, international, or both?

A. As the member companies, rather than myself, were the ones determining what constituted

a potentially harmful document, I do not know what their bases for making determinations

were. My focus was on carrying out the directives of the member companies, ensuring that those companies were satisfied with the job being done in document retention. Personally, I did not concern myself with the parent or affiliate companies overseas.

Q. Do you know whether or not the decisions made by the Australian operating companies regarding which documents should or should not be destroyed were motivated by concerns for their overseas parent or affiliate companies?

A. No, I do not know.

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Q. Is it possible that the member companies decisions on what documents to destroy was

motivated, at least in part, by a desire to protect their parent and affiliate companies

overseas?

A. Yes.

Q. I am handing you U.S. Exhibit 89,393. Have you seen this document before?

A. I suspect that I have. I do not recall this specific document, but it says that it was

addressed to me. At that time, I frequently received correspondence from Phil Francis attaching company reports for my review.

Q. What is the date of the document?

A. 16 April 1991.

Q. Who is it from?

A. Phil Francis.

Q. Who is Phil Francis?

A. He was the government and public affairs officer of Philip Morris's Australian affiliate

during my time at the TIA. I see that his official title is listed here as Corporate Affairs

Director - the titles differed from company to company.

Q. Who is the letter to?

A. Peter Alexander, Glenn Eggleton, Ken Pimblett, George Symmes, and myself.

Q. Who is Peter Alexander?

A. Rothmans' Australian affiliate's government & public affairs officer.

Q. Who is George Symmes?

A. I do not recall, but I suspect he was the government and public affairs officer from WD &

HO Wills. If that is the case, I recall that he did not last long and went back to New Zealand.

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Q. What is the subject listed on this letter?

A. EPA - US - SAB Report

Q. Do you recall what the EPA - US - SAB Report is?

A. No.

Q. The letter refers to an attached report from Philip Morris International. Do you recall this report?

A. It was routine for me to receive reports or studies from member companies and their parent and affiliate companies. I received a lot of correspondence like this, but I don't recall this particular document.

Q. Do you have any reason to believe that you didn't receive this document?

A. No. I suspect that I did.

Q. The letter says that the report was going to be released on "April 18 (US time)" and that

therefore "the morning news on April 19 is likely to carry the story" in Australia. Do you know whether the report was a U.S. report?

A. I don't recall this correspondence, so I cannot be sure, but it seems clear that it was, and it

was quite common for me to receive and be briefed on reports from the United States and elsewhere.

Q. The exhibit states that "it would be of benefit to discuss the co-ordination of activities

here in Australia on a conference call." Do you recall whether such a conference call took place?

A. No, but conferences coordinating the activities of the Australian member companies were commonplace.

Q. Were such coordinating conferences commonly held in relation to issues, like this one, arising in the United States?

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A. Yes.

Q. Are you familiar with the AFCO v. TIA case?

A. Yes.

Q. What was the AFCO case?

A. It was a lawsuit to enjoin the TIA from making public statements that there was no evidence that passive smoking caused disease. The case was in its final stages during my

tenure. The TIA lost the lawsuit.

Q. Do you know whether or not the TIA member companies overseas parents and affiliates were concerned about the potential ramifications for them from the AFCO decision?

A. Yes. The AFCO decision was the first of its kind, and I knew that the parents and affiliates of the member companies were greatly concerned about the potential impact of the AFCO case on the passive smoking issue in other parts of the globe and were paying very close attention to the matter.

Q. I am handing you U.S. Exhibit 89,396. Have you seen this document previously?

A. Yes.

Q. What is this document?

A. It is a written guideline for answering expected questions from the press in response to possible outcomes of the AFCO case.

Q. Please turn to the final page of the exhibit, which is a fax cover sheet. Who sent this fax?

A. Glenn Eggleton.

Q. What is the number of pages listed on the fax cover sheet?

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Q. What is listed as the "matter name" on the fax sheet?

A. TIA - AFCO.

Q. Do you recall receiving the attached document from Glenn Eggleton?

A. Yes.

Q. What is the date listed on the fax?

A. 28 February 1992.

Q. Do you recall whether the TIA was anticipating a ruling in the AFCO case at that time?

A. My recollection is that the AFCO decision was in February of 1991, but that the TIA had

appealed the ruling. During the appeal, Glenn Eggleton would frequently correspond with the TIA, the member companies, and their parents and affiliates regarding how possible outcomes should be addressed from a public relations standpoint.

Q. Do you know why Glenn Eggleton was sending out guidelines for answering questions on AFCO?

A. This was a normal procedure. Clayton Utz wanted to ensure that, whenever a matter arose

that would require a response from the TIA that the response would be consistent and be appropriate - in that the TIA wouldn't cause any legal or public relations problems.

Q. Did the member companies coordinate a response on the issue of passive smoking?

A. Of course.

Q. Did the member companies' parent companies in the United States and London also

coordinate a response on the issue of passive smoking?

A. Yes, and I think that is clear from the document.

Q. Looking at the fax page, do you see that a Mr. C. Wall of Philip Morris International

in New York, a Mr. D. Schechter of BATUS Inc. in Kentucky, a Mr. P. Clark of

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BATCo in London, and a Mr. Willis of Shook Hardy & Bacon in Kansas City are all listed as recipients of this fax?

A. Yes.

Q. Was it common for Glenn Eggleton and Clayton Utz to send out instructions on how

to answer questions from the press on Australian matters to tobacco industry representatives in the United States and England?

A. I am not aware nor recall all that Clayton Utz did in this regard. Nevertheless, the tobacco industry in the United States and elsewhere in the world were extremely concerned about the AFCO case and knew that it could have serious ramifications on their

business across the globe. That was the reason the TIA had numerous visits from Shook, Hardy & Bacon.

Q. How many times did lawyers from Shook Hardy & Bacon visit the TIA?

A. I don't recall the exact number, but the visits were frequent - half a dozen or more times in a year.

Q. Do you recall which lawyers visited?

A. Yes. Robert Northrip.

Q. Each time?

A. Yes.

Q. What did Mr. Northrip do when he visited?

A. Mr. Northrip would discuss the AFCO case and other passive smoking issues with me. He addressed other matters as well, but those were his primary concern.

Q. Did you request that Mr. Northrip visit the TIA?

A. No. The primary purpose for Mr. Northrip's trips to Australia was to visit with the member companies, but he would visit the TIA each time, as well.

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Q. How often did the member companies correspond to coordinate on passive smoking?

A. Frequently. This was considered a critical issue at the time, and a great deal of effort

was

spent by the parties to make sure that everyone was on the same track.

Q. Did the Document Retention Policy change while you were at the TIA?

A. Yes. However, I do not recall the changes as being significant, basically fine tuning to

bring the TIA Document Retention Policy closer in line to that of the member companies. The most significant changes were in the implementation of the Policy, rather than the Policy itself.

Q. How did the implementation of the Policy change?

A. At the time I joined the TIA, the implementation of the Document Retention Policy was

done primarily by employees of the TIA. When I arrived morale was low and the TIA had

not done a particularly good job of applying the Document Retention Policy, in that many

documents that should have been destroyed had not been destroyed. The TIA's lack of vigilance in implementing the Policy became a subject of frequent discussion on the part

of the member companies and Clayton Utz. As a result, both the member companies and Clayton Utz took a more hands on approach in ensuring that the Document Retention Policy was applied and that potentially damaging documents were destroyed.

Q. Did the importance of the Document Retention Policy shift during your tenure at the TIA?

A. Yes. Later in my tenure, the Document Retention Policy was made a major priority. Whereas the Document Retention Policy may have been around twentieth on the list of the

TIA's priorities previously, it became extremely important, the second, third, or fourth

priority at the TIA.

Q. Why?

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A. Clayton Utz became concerned that the Document Retention Policy at the TIA was not as

"airtight" as the TIA's member companies, and wanted to revamp the TIA's Document Retention Policy to make sure that it was as secure as the member companies' policies.

Q. What do you mean by revamp?

A. Both make changes in the actually Document Retention Policy itself to make it more secure, and also make changes to the implementation of the Document Retention Policy to

make sure that it was functioning as it should, and that no documents that should have been destroyed had been retained.

Q. Was the Document Retention Policy a frequent subject of discussion?

A. It was a constant subject of discussion with Clayton Utz. There was great concern that

the

TIA was a "weak link" and that discovery at the TIA could become a problem for the member companies.

Q Do you have any understanding of the document retention policies of the member companies of the TIA?

A. Yes.

Q. Were the document retention policies of the member companies similar to the Document Retention Policy at the TIA?

A. Yes. While I don't recall the specifics of all of the policies, all of the policies were

similar

to each other and the TIA's policy. The purpose of each of the policies was the same, to

prevent potentially damaging documents from being discovered, so significant differences

would have made little sense.

Q. Do you recall whether there was ever any discussion between member companies at

the monthly TIA meetings over which documents each member should destroy?

A. Yes. The only reason that the TIA existed was so that there would be an industry voice

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and industry cohesion on certain issues. It was not unusual for someone at a meeting to sit

down and say, "Has anybody got such-and-such a survey? Has anybody got such-and-such

a document, and if you've got it, we at this company didn't like it, and we've got rid of it

and we suggest you review it if you've got it."

Q. Mr. Welch, are you familiar with any scientific research that was done on behalf of

the tobacco industry?

A. Yes.

Q. How are you familiar with tobacco industry scientific research?

A. The commissioning of certain research was a subject of monthly TIA meetings that included each of the member companies.

Q. Was scientific research a subject addressed at every monthly TIA meeting?

A. Scientific research was often a subject addressed at meetings.

Q. What was discussed?

A. Companies would discuss the latest research, both external and internal to the companies.

They would talk about the ramifications of the research and, in the case of external negative for the industry, what actions needed to be taken to respond to the new findings.

The meetings were an opportunity for the companies to share and discuss new science.

Q. You've stated that the CEOs of the member companies and the government and public affairs officers attended monthly TIA meetings. Did scientists from member companies attend either of the monthly TIA meetings?

A. No.

Q. Do you know why scientific studies were discussed at TIA meetings that were not attended by the scientists?

A. Yes. The basis for commissioning the scientific studies discussed at TIA meetings was

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not science, it was litigation, legislation, or public affairs concerns. Whenever any scientific report was published that was negative for the industry, it was standard practice

that the member companies would immediately seek to hire a scientist who would do research or a study that would produce a result that was favorable to the industry. If the

anti-industry research said "white" the member companies would contract for a report that

said "black."

Q. What do you mean by "seek to hire a scientist who would do research or a study that

would produce a result that was favorable to the industry"?

A. Discussions would be held as to the desired outcomes, what research result would be beneficial to the industry. Then the companies would talk about whether they knew a scientist or scientists who could be counted upon to produce the result desired by the industry. Why would a company fund research that confirmed a bad result?

Q. Were these reports jointly funded by the member companies?

A. No. While the companies would confer regarding which scientist or scientists should do

the study, and what results they were seeking, one company or another other would end up

funding and commissioning the report.

Q. Did the member companies ever share any of their internal scientific research with

you?

A. Yes. There were occasions when the government and public affairs officers would consult

with me and other members of the TIA on their internal activities in that regard.

Q. Did the member companies ever send their internal scientific studies or research to

the TIA library?

A. Yes. From time to time they would.

Q. Which companies provided the library with their internal scientific studies or

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research?

A. To the best of my knowledge and the best of my recollection, all the companies, with the

exception of Reynolds, contributed from time to time to the library and what we had.

Q. Would the member companies consult with you regarding their own internal scientific research?

A. Yes.

Q. Why would the member companies consult with you about their own internal scientific research if you were not a scientist?

A. To ensure that there would be no conflicts with the research being done by the other member companies. As the industry spokesperson one had to know what was going on in the industry and the industry comprised the members.

Q. You testified that one of your responsibilities at the TIA was to make public statements on behalf of the industry, correct?

A. Yes.

Q. Would your statements be reviewed and approved prior to your making the statements?

A. Yes. Clayton Utz would review and it give its approval to each proposed public statement

before it was made. If it was a live event, like a radio or television interview, Clayton Utz

would go over talking points in advance on the expected subject matters of the interview

and how I should answer specific questions, much like the proposed questions and answers

that Glenn Eggleton distributed that you showed me earlier.

Q. Do you know why Clayton Utz, a law firm, would review and approve your public

statements?

A. Yes. The review was to ensure that the public statements on behalf of the industry did

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have a negative impact on any smoking and health litigation position.

Q. Did anyone else review the proposed public statements?

A. Often the public statements would be discussed generally with the CEOs and government

and public affairs officers of the member companies at TIA meetings, but the only ones who would actually review and approve my public statements were the lawyers at Clayton Utz.

Q. You have stated that you are not a scientist, but did you receive any scientific training on smoking and health issues while at the TIA?

A. Yes. Glenn Eggleton, a solicitor for Clayton Utz, taught a mini-course on epidemiology to certain members of the TIA.

Q. On how many occasions did you attend this epidemiology class held by Mr. Eggleton?

A. Once a week for a morning for a number of weeks. How many I don't recall.

Q. Were any materials distributed as part of Mr. Eggleton's course?

A. Yes. However, we were always required to return the materials to Mr. Eggleton. We were not permitted to take the materials outside of the room.

Q. Did you find this requirement unusual?

A. Yes. However, it was consistent with the member companies concerns regarding the dissemination of potentially damaging documents.

Q. Previously, you stated that your tenure at the TIA was marked by a great deal of pressure on the industry from potential litigation and by anti-smoking organizations.

Other than destroying documents to prevent anyone from using those documents against the industry, did the TIA take any other actions to address these threats?

A. Yes. The flip side of destroying our own documents was to try to acquire documents held

by the anti-smoking organizations.

Q. How did you do that?

A. As the anti-smoking organizations were not as careful as the industry about getting rid of

documents, the TIA paid individuals to go through the dumpsters and rubbish of antismoking

organizations in order to find any potentially relevant documents relating to their plans or their funding.

Q. Did TIA employees go through the anti-smoking trash?

A. No. The TIA contracted with a private inquiry agent, Winston Gregory & Associates. Winston Gregory employed a number of individuals who would go through the antismoking

organizations' garbage. Mr. Michael Rigo was one such person - Mr. Rigo was nicknamed "the garbageman".

Q. Who was aware of this practice?

A. The member companies. My boss, John Devine, Chairman of the TIA. Several other employees at the TIA. Clayton Utz may have been aware, I don't recall.

Q. Did the member companies approve of this practice?

A. Yes. If they hadn't approved of it, they would not have paid for it, and we wouldn't have done it.

Q. Were you able to get any useful information about the plans and practices of antismoking

organizations through these methods?

A. Yes.

Q. Do you recall any of the "anti-smoking organizations" that would be monitored in this fashion?

A. Yes. The New South Wales Cancer Council and the Heart Foundation. In addition the TIA once used Winston Gregory's contacts within Little Athletics in Canberra - Little

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Athletics is a children's sports association, like Little League, but for athletes, that is track

and field instead of baseball - to request that a prominent anti-smoking lobbyist, Ms. Rene

Bittoun, give an anti-smoking seminar to the children at Little Athletics. It was thought that Ms. Bittoun, despite often claiming that she had a degree from a certain university, hadn't in fact completed her course of study. Winston Gregory arranged for a video to be made of the seminar - ostensibly so that other children could see it - but in fact to try to catch her on camera reciting possibly false credentials so that it could later be used against her.

Q. Did you ever visit the United States as the CEO of the TIA?

A. I did.

Q. When was that?

A. October 1991.

Q. What was your itinerary?

A. I flew from Sydney to Kansas City and met with Don Hoel, Robert Northrip, and other lawyers at Shook, Hardy & Bacon. I was there for a day. Then I went to Washington, DC and met with my American counterpart, Sam Chilcote, and with John Rupp, of the firm of solicitors, Covington & Burling. Then I went to London and met with David Bacon of British American Tobacco, which was the parent of WD & HO Wills. From London I went to an Infotab conference in Hamburg, and came home via Paris where I had a twoday break.

Q. Do you recall the subject matter of your meeting with Shook, Hardy & Bacon?

A. We discussed TIA matters relating to passive smoking and other subjects, but I can't recall the discussion with any specificity.

Q. Why did you meet with Shook, Hardy & Bacon?

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A. Since I was travelling across the globe to the Infotab meeting anyway, it was thought that

it would be useful for me to travel to the U.S. and meet with both Shook, Hardy & Bacon and Covington & Burling, since they played such central roles in international coordination of

tobacco related issues.

Q. Do you recall the subject matter of your meeting with Covington & Burling?

A. It was similar to my discussion with Shook Hardy. The only specific subject matter I recall is passive smoking.

Q. Why did you meet with Sam Chilcote?

A. For the same reasons I met with Shook Hardy & Bacon and Covington & Burling - I was travelling anyway, and Mr. Chilcote was my American counterpart.

Q. Do you recall what you discussed with Mr. Chilcote?

A. I recall very little. I do recall that Mr. Chilcote expressing to me his feelings that he felt

hamstrung and frustrated by limitations imposed on him by the U.S. Tobacco Institute's member companies. I was introduced to other U.S. Tobacco Institute employees and taken to lunch in Georgetown.

Q. Have you previously testified in relation to the document retention policies of the TIA?

A. No.

Q. Have you previously given any interviews in relation to the document retention policies of the TIA?

A. Yes.

Q. When?

A. The first instance was following the McCabe decision, I believe sometime in November of

2002, I did an interview with an Australian television program "60 Minutes".

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Q. How did you come to give that interview?

A. When the McCabe decision was released, it received a great deal of media attention. As I

understood it, much of the decision addressed the document retention policies of Wills and

the TIA, and the fact that the document retention policies were in fact document destruction policies. I telephoned Peter Gordon, of Slater & Gordon, the solicitor for the

plaintiff Rolah McCabe to let him know that the facts the McCabe judgment, in relation to

the TIA's Document Retention Policy and Wills's Document Retention Policy, were correct. I then had a brief meeting with Mr. Gordon, at which we discussed the TIA's

Document Retention Policy. Following that meeting he arranged for me to be interviewed by Charles Woolley on 60 Minutes.

Q. What other interviews did you give?

A. I also gave interviews to Kerry O'Brien and Nick McKenzie of the Australian Broadcast Corporation.

Q. How did you come to give those interviews?

A. Following the release of the Court of Appeals decision that overturned McCabe a producer

for the ABC television program "The 7:30 Report" rang me at home one day saying that Kerry O'Brien, the host of the program, was "interested in talking to you about document retention".

Q. And how did you respond?

A. That I'd be prepared to be interviewed.

Q. Why did you agreed to be interviewed?

A. I felt it was the right thing to do. We did have a policy, and at the time it was being indicated that there was no such policy. I felt it was appropriate to set the record straight.

In addition, I am fed up with business barons and politicians using "spin doctors" to

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manipulate the facts.

Q. I'm handing you U.S. Exhibit 89,397. Is this following document a transcript of your interview with Mr. O'Brien?

A. It appears to be.

Q. Do you see the broadcast of your interview with Mr. O'Brien?

A. I did not see it live, but I did watch a recording of the interview.

Q. Did the interview occur on July 23, 2003?

A. I don't recall the exact date, but it was in that time period.

Q. Does the substance of this transcript accord with your recollection of the interview?

A. Yes.

Q. How did the interview with Nick McKenzie come to pass?

A. In a similar fashion. A producer for Mr. McKenzie's radio program contacted me at home, asked me if I would be willing to be interviewed, and I agreed.

Q. I'm handing you U.S. Exhibit 89,398. Is this document a transcript of your interview

with Mr. McKenzie?

A. It appears to be.

Q. Did the interview occur on July 23, 2003, also?

A. I recall it being the same day as the O'Brien interview.

Q. Does the substance of this transcript accord with your recollection of the interview?

A. Yes.

Q. Did you receive monetary compensation for any of these interviews?

A. No.

Q. Are you being compensated for your testimony in this case?

A. No. I am neither receiving, nor have I sought compensation.

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Q. Mr. Welch, why are you voluntarily testifying before this Court?

A. As I said before, I am sick of people in high places manipulating and distorting the truth,

and then hiding behind "spin doctors" or others who try to cover up their actions.

There

was a Document Retention Policy and it's purpose was to keep damaging documents out of

the courts and out of the public. When the United States Department of Justice asked me to testify about it, I agreed.

Q. Thank you for your time, Mr. Welch.